

**IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA**

**FILED**  
COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

**WENDELL MONTRELL HAYES,**

**Petitioner,**

**v.**

**THE STATE OF OKLAHOMA,**

**Respondent.**

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

AUG 31 2022

JOHN D. HADDEN  
CLERK

**No. PC-2022-643**

**ORDER DENYING DIRECT APPEAL OUT OF TIME**

Petitioner, pro se, petitions this Court for a direct appeal out of time from his convictions in Oklahoma County District Court Case No. CF-1999-5510. Petitioner was convicted by jury and sentenced to life without the possibility of parole for Murder in the First Degree and ten years imprisonment for Conspiracy to Commit a Felony, to wit: Robbery with a Firearm. This Court dismissed Petitioner's attempted direct appeal for failure to file a petition in error. *Hayes v. State*, No. F-2000-1607 (Okla. Cr. June 19, 2001) (not for publication).

On February 2, 2022, Petitioner filed an original application for post-conviction relief in the District Court seeking a direct appeal out of time from his 2000 Judgment and Sentence, pursuant to Rule 2.1(E), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.

18, App. (2022). He alleged he was denied his right to a direct appeal through no fault of his own because (1) the trial court abused its discretion in “assuming” he was not indigent for purposes of appeal, and (2) he received ineffective assistance of counsel where trial counsel “abandoned” him for appeal. Finding no merit in either proposition, the Honorable Heather E. Coyle, District Judge, denied the application in a thorough order filed on May 26, 2022.

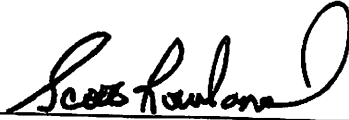
Judge Coyle found that at the time of sentencing, Petitioner was fully aware of his right to appeal and the manner in which to invoke that right. From the record, she concluded that Petitioner was not denied his right to appeal through no fault of his own, but rather the dismissal of his direct appeal was the result of his own inaction. We agree. In order to be granted an appeal out of time, Petitioner must prove he was denied an appeal through no fault of his own. *Dixon v. State*, 2010 OK CR 3, ¶ 5, 228 P.3d 531, 532. Petitioner’s petition to this Court and the record fail to establish he was denied an appeal through no fault of his own. Therefore, Petitioner’s request for a direct appeal out of time is **DENIED**.

Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2022), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

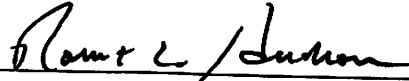
**IT IS SO ORDERED.**

**WITNESS OUR HANDS AND THE SEAL OF THIS COURT this**

31st day of August, 2022.



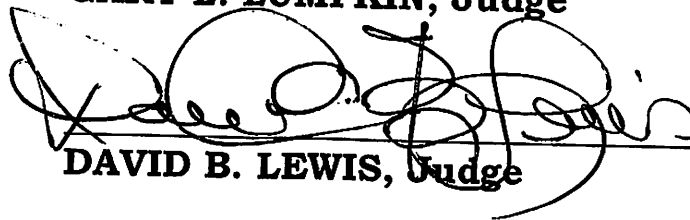
**SCOTT ROWLAND, Presiding Judge**



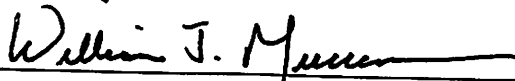
**ROBERT L. HUDSON, Vice Presiding Judge**



**GARY L. LUMPKIN, Judge**

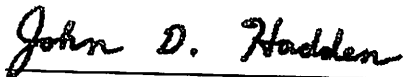


**DAVID B. LEWIS, Judge**



**WILLIAM J. MUSSEMAN, Judge**

ATTEST:



Clerk

PA